



# ***FRAUD FACTS***

## **Air Force Deputy General Counsel Contractor Responsibility**

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### **ABOUT FRAUD FACTS**

*Fraud Facts* is published by the Air Force Deputy General Counsel (Contractor Responsibility) to present current information about selected fraud, suspension and debarment actions, and issues of interest. Many different agencies contribute to the investigation, prosecution, and completion of a case, including, but not limited to, the Air Force Office of Special Investigations, the Defense Criminal Investigative Service, and the Air Force JAG Corps. We thank you for your continued support and assistance in protecting the government's contracting interests.

### **CONTENTS**

Suspension & Debarment	1
Recent Debarments	2
Guilty Pleas	3
Fraud Remedies Bulletins & Updates	3
Other Related News	4
Web Resources	4
Articles & Speeches	4
Ethics Corner	5
Legislative Activity	6
Contact Information	7

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### **INTERNATIONAL BRIBERY, EXTORTION & FRAUD** ***96 PROPOSED FOR DEBARMENT IN INTERNATIONAL CONSPIRACY***

AM-AR International was a Department of Defense (DoD) subcontractor that sold parts at grossly inflated prices to the Royal Saudi Air Force under the Foreign Military Sales (FMS) program between 1995 and 1997. The FMS program is a DoD effort to provide friendly foreign nations access to military material from U.S. suppliers. In order to conceal the grossly inflated prices of the parts, AM-AR formed several bogus distributorships to create the illusion of adequate competition. AM-AR also paid kickbacks to military equipment contractors and procurement personnel in violation of the Anti-Kickback Act in order to secure their illegal cooperation in the scheme. The AM-AR conspiracy spanned the globe, extending from the U.S. into Canada, England, Saudi Arabia, and Thailand.

On August 21, 2001, David A. Klemenz, AM-AR's former chief financial officer, pled guilty to conspiracy to pay kickbacks to John Demeritt, a former site manager for Lear-Siegler Management Services. Klemenz was sentenced on November 30, 2001 to two years probation, and ordered to pay restitution of \$8,000. In 2001, Demeritt pled guilty to fraud charges, along with Larry May, a former vice president of AM-AR. May was sentenced on November 30, 2001 to home detention for twelve months, five years probation, fined \$2,000, and ordered to pay \$189,691 in restitution. Demeritt was sentenced on April 25, 2002 to five years supervised probation and ordered to pay \$15,000 restitution. Gary Douglas Burks, owner of AM-AR, pled guilty to tax fraud and conspiracy to pay kickbacks and was sentenced on January 30, 2002 to a year and a day in a community detention facility, fined \$42,613, and ordered to pay restitution of \$107,386.

On January 18, 2000, the Air Force suspended thirty-one individuals and entities associated with the AM-AR conspiracy, including AM-AR, Burks, Klemenz, Demeritt, and May, pursuant to FAR 9.407-2(a)(1), (3), (7), (b), (c), and 9.407-5(a). On April 14, 2004, pursuant to FAR 9.406-1(b); 2(a)(3), (c); 5(a), (b), and (c), the Air Force proposed for debarment ninety-six individuals and entities associated with the AM-AR conspiracy. The Defense Criminal Investigative Service, the Federal Bureau of Investigation, and the Internal Revenue Service conducted the criminal investigation. A special thanks to DCIS Special Agent Mark Pohl for his assistance in this case.

*The views and opinions of the authors expressed herein do not necessarily state or reflect the official policy or position of the Department of the Air Force, Department of Defense, or United States Government. Distribution is limited to agencies of the United States Department of Defense. Please refer all requests to receive Fraud Facts to Sarah Moffett at [Sarah.Moffett@pentagon.af.mil](mailto:Sarah.Moffett@pentagon.af.mil).*

## RECENT DEBARMENTS

AB Engineering and Molding, Inc.  
Advanced Engineering Production  
Alan Binks  
Andrew Binks  
Exact Cutting  
Hilary Binks  
Karen Binks  
USA Asbestos Removal Company  
USA Companies  
Universal Contracting Services  
Andrea Zeibekis  
Jose Celestino  
Nitsa Bubalo  
Peter Bubalo  
Suni Kim  
John D. Rowell  
Francisco Vasquez  
Richard Alan Floris  
FC Construction  
Phillip Swinton  
Harry Roy-Adelburt Watley  
Frances M. Watley  
Naras Aviation, Inc.  
Natarajan Narayanan  
Parvathi Narayanan  
Key Enterprises, Inc.  
Christopher S. Key

conduct and pursuant to FAR 9.406-2(c), which permits the Air Force to debar a contractor for improper conduct of so serious and compelling a nature that it affects their present responsibility to be government contractors or subcontractors, the Air Force debarred the following individuals on May 7, 2004: Mr. Francisco Vasquez, Mr. John D. Rowell, Ms. Suni Kim, and Mr. Richard Allan Floris. Additional debarments may follow. A special thanks to AFOSI Special Agent Dave Senness and DCIS Special Agent Michael Blackburn for continuing to assist long after their investigative cases were closed.

### OVERCHARGING THE GOVERNMENT—*Wright-Patterson AFB, OH*

In June of 2001, Capital Consulting Group, LLC (CCG) was awarded a basic purchase agreement to provide consulting services to the Materiel Systems Group at Wright-Patterson AFB. Raymond R. Patterson, the president of CCG, admitted to the Contracting Officer's Representative that he billed the Government for inflated hours, which resulted in overcharging the government in the amount of \$33,887.52. On May 7, 2004, CCG, Patterson, and Dr. Kenneth Rotondo, a member of CCG, were proposed for debarment pursuant to FAR 9.406-2(c), which permits the Air Force to debar a contractor for any cause that is so serious or compelling that it adversely affects the contractor's present responsibility. A special thanks to AFOSI Special Agent Jared Camper for investigating this case.

### MISCONDUCT ON AN AIR FORCE CONTRACT AND A NAVY CONTRACT—*Tinker AFB, OK*

In 1995, Tolo Incorporated was awarded an Air Force contract to provide auxiliary power units (APUs) for the KC-135. Subsequently, Tolo was acquired by Rohr, a subsidiary of the Goodrich Corporation. While performing the Air Force contract, several employees were involved in various types of misconduct, such as knowingly sending APUs to the Air Force that were missing parts, and pilfering APUs previously purchased by the government that were kept in Tolo storage until the government needed them. Some Tolo employees were also responsible for misconduct involving a U.S. Navy contract (the USN contract) to manufacture destructor bombs. Specifically, those employees violated contract specifications by co-mingling of bomb lots, failing to perform certain tests, and improperly assigning serial numbers to bombs. As a result of this seriously improper

### FAILURE TO FOLLOW PROBATION & THE FAR—*FL*

On January 27, 2003, SAF/GCR proposed for debarment Naras Aviation, Inc. (NAI) and two of its corporate officers after the United States District Court for the Southern District of Florida determined NAI was in violation of its probation. Specifically, NAI failed to employ the court-required, qualified quality control officer for a period of six months during its period of supervised probation, and submitted quarterly quality control compliance audit reports that were not produced by a qualified quality control officer. In addition, NAI submitted a bid for a government contract, but subsequent to being proposed for debarment, NAI failed to notify the procurement contracting officer of their change in eligible status as required by FAR 52.209-5(b), which states that an offeror ". . . shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was



erroneous when submitted or has become erroneous by reason of changed circumstances." Pursuant to FAR 9.406-2(c), which permits the Air Force to debar a contractor for any cause that is so serious or compelling that it adversely affects the contractor's present responsibility, the Air Force debarred NAI and two corporate affiliates from government contracting for a period of three years. A special thanks to AFOSI Special Agent Don Walden for investigating this case and referring it to GCR.

#### **ADMINISTRATIVE AGREEMENT VIOLATION— Wright-Patterson AFB, OH & Lackland AFB, TX**

USA Asbestos Removal Company, Inc., provided asbestos remediation services under an Air Force contract at Wright-Patterson AFB (WPAFB). In 1998, USA Asbestos gave inappropriate gifts and gratuities to John R. Beckstein, a government construction inspector responsible for oversight of the USA Asbestos contract at WPAFB. On February 28, 2000, Beckstein pled guilty to a one-count information charging him with conspiracy to commit bribery in violation of 18 U.S.C. § 371. As a result of this malfeasance, USA Asbestos entered into an administrative agreement with the Air Force on July 3, 2001, subject to the oversight of an independent ombudsman. In 2002, USA Asbestos failed to report a lawsuit to the Air Force, which was a material violation of the administrative agreement, and committed additional illegal acts in connection with a government contract at Lackland AFB. Pursuant to FAR 9.406-2(c), which permits the Air Force to debar a contractor for any cause that is so serious or compelling that it adversely affects the contractor's present responsibility, GCR debarred USA Asbestos, Petar Bubalo, and five related affiliates on March 25, 2004, for a period of five years.

#### **GUILTY PLEAS**

##### ***United States v. Druyun***

On April 20, 2004, Darleen Druyun pled guilty to one felony count of conspiracy in the United States District Court for the Eastern District of Virginia. Druyun, a former Air Force acquisition official, admitted to U.S. District Court Judge T.S. Ellis III that she entered into, and then failed to disclose, discussions with Michael

Sears, a senior Boeing Company executive, concerning her future employment with Boeing. While serving as the principal deputy assistant secretary of the Air Force for acquisition and management, Druyun was involved in several matters involving Boeing. According to U.S. Attorney Paul McNulty, "[f]rom September 23, 2002 until November 5, 2002, Druyun participated personally and substantially as a government employee overseeing the negotiation of [a matter involving] Boeing while she was at the same time negotiating prospective employment with a senior executive of The Boeing Company."

On February 9, 2004, the Air Force suspended Druyun and Sears pursuant to FAR 9.407-2(a)(7), which permits the suspension of a contractor for conduct indicating a lack of business integrity that affects the contractor's present responsibility.  
*See Federal Contracts*, Vol. 81, No. 16, (Apr. 27, 2004).



#### **FRAUD REMEDIES BULLETINS & UPDATES**

Fraud Remedies Bulletins and Fraud Remedies Updates (formerly called Anti-Fraud Bulletins & Updates) are insightful tools addressing pertinent issues facing investigators and attorneys today, and are published by the Office of Fraud Remedies, SAF/GCR. For questions, please call John W. Polk, Director, Office of Fraud Remedies, SAF/GCR, DSN 425.0159; 703.588.0159. Previous Fraud Remedies Bulletins & Updates are available on SAF/GCR's website, which can be accessed as follows: from the FLITE homepage, go to home, click on AF GC, then click on "Contractor Responsibility," and finally click on "procurement fraud."



## OTHER RELATED NEWS

### 1987 Whistle Blower Collects \$1.8 Million in April 2004 Northrop Grumman Settlement

Seventeen years after a blue-collar worker blew the whistle on Northrop Grumman's fraudulent testing and defective parts supply to the Air Force for nuclear-armed cruise missiles, Leo Barajas collected a \$1.8 million share of the government settlement. Barajas worked with the tests on flight data transmitters Northrop Grumman was using on the Air Force's air-launch cruise missile. After the Northrop Grumman transmitters consistently failed the required tests, his supervisors instructed him to falsify test results. After Barajas blew the whistle on the fraudulent practices in 1987, Frank Lynch, Northrop's then vice chairmen, admitted in a congressional hearing in 1988 that the tests were falsified. The consequences of this case were far reaching. Every air-launch cruise missile in the Air Force fleet had to be retrofitted with new guidance systems. Northrop, along with two executives, pled guilty to criminal fraud charges, and the company paid a then-record \$17 million criminal fine in 1990 and an additional \$8 million in civil charges.

## WEB RESOURCES

### SAF/GCR Websites:

SAF/GCR

<http://www.safgc.hq.af.mil/safgcr.htm>

HAFDASH GCR

<https://intranet.hq.af.mil/webfiles/safgc/>

FLITE GCR

<https://aflsa.jag.af.mil/>

AFNET

<http://afnet.safgc.hq.af.mil/>

### Additional Websites:

Central Contractor Registration

<https://www.ccr.dlis.dla.mil/ccr/scripts/index.html>

Defense Federal Acquisition Regulations

<http://www.acq.osd.mil/dpap/dfars/index.htm>

Excluded Parties List System

<http://www.epls.gov/>

Federal Acquisition Regulations

<http://www.arnet.gov/far/>

Thomas (U.S. Congress Online)

<http://thomas.loc.gov>

*\*Multiple other useful links may be found on the SAF/GCR website via FLITE.*

## ARTICLES & SPEECHES

### ARTICLES

➤ Suspension & Debarment: Emerging Issues in Law and Policy

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=509004](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=509004)

➤ Current Debarment Rules Work, Agencies Say

<http://federaltimes.com/index.php?S=2919149>

### UPCOMING SPEECHES

➤ June 3, 2004: Steve Shaw is participating as a panelist, along with other DoD suspension and debarment officials, at the Army Jag School Contract and Fiscal Law Department in Charlottesville, VA.

➤ June 4, 2004: Steve Shaw will lead a panel of government officials at the Defense Industry Initiatives' Best Practices Forum in Washington, DC.

➤ June 8-10, 2004: Steve Shaw is scheduled to speak at the Transparency International UK Conference on corruption in the international defense industry in Arundel, Sussex, England.

➤ August 17-20, 2004: Steve Shaw will instruct on suspension and debarment issues for the Air Force JAG School's Air Force Systems and Logistics Contracting Course.

### RECENT SPEECHES & ARTICLES

➤ May 17-21, 2004: Steve Shaw spoke at the AFMC SJA Conference at Hanscom AFB on suspension and debarment. Steve Shaw and John Polk also participated in a panel on fraud remedies.

➤ April 29, 2004: Steve Shaw provided a presentation at the Lockheed Martin Ethics & Compliance Conference in Bethesda, MD, on corporate governance.

➤ April 24-27, 2004: Steve Shaw spoke at the National Contract Management Association, World Congress Conference in Orlando, FL, on corporate governance.





## ETHICS CORNER

### Participating in Political Activities

*by Mark Stone, AFMC Law Office, WPAFB*

Since we are now in the political season, it is useful to know where to find the rules on Air Force employees participating in political activities.

The guidance on Federal candidates visiting military installations and other related topics is found in a four-page, 5 Dec 03 SECDEF message entitled "DoD Public Affairs Policy Guidance Concerning Political Campaigns and Elections." This message is available at: [http://www.defenselink.mil/dodgc/defense\\_ethics/dod\\_oge/campaigns\\_elections.pdf](http://www.defenselink.mil/dodgc/defense_ethics/dod_oge/campaigns_elections.pdf)

The rules for Air Force members are found in DoD Directive 1344.10, Political Activities by Members of the Armed Forces on Active Duty, 15 Jun 90 (certified current as of 1 Dec 03) and AFI 51-901, Political Activities by Members of the US Air Force, 1 Jan 96.

The rules for Air Force civilian employees are found in the Hatch Act and in the regulations issued by the Office of Personnel Management (OPM) that implement the Act. The Hatch Act and its implementing regulations actually contain three sets of rules.

The first set of rules (5 CFR Part 734, Subpart D) applies to career SES employees, Administrative Law Judges, Contract Appeals Board members, and the employees of 14 specified Federal agencies (of which the Air Force is not one).

The second set of rules (5 CFR Part 734, Subparts B and C) applies to all other Federal civilian employees (except for a small number of employees who are subject to the third set of rules).

The third set of rules (5 CFR Part 733) applies to Federal civilian employees who live in communities designated by OPM as having a high percentage of Federal employees. There are a number of such designated communities in Maryland and Virginia. Warner Robins, Georgia, and Bremerton, Washington, are other examples of such designated communities.

Thus, the vast majority of Air Force civilian employees are subject to the second set of rules.

The Office of Special Counsel (OSC) has prepared three documents that contain information on the Hatch Act restrictions. The first is a two-page summary of the political activity rules that apply to Federal civilian

employees GS-15 or below (i.e., the second set of rules). It is on the OSC website at:

<http://www.osc.gov/documents/hatchact/hafllyer.pdf>

The second document is 14 pages long and is entitled "Political Activity and the Federal Employee." It discusses on pages 4 - 6 the rules on political activity for Federal civilian employees GS-15 or below (i.e., the second set of rules). It discusses on pages 7 - 9 the rules on political activity for career SES employees (i.e., the first set of rules). It also contains the full text of the six statutes that make up the Hatch Act (i.e., Title 5, United States Code, sections 7321 - 7326). This document is on the OSC website at:

[http://www.osc.gov/documents/hatchact/ha\\_fed.pdf](http://www.osc.gov/documents/hatchact/ha_fed.pdf)

The third document is the primary Hatch Act implementing regulation, i.e., Title 5, Code of Federal Regulations, Part 734. Although the regulation that is linked to below is dated January 1, 2001, the provisions are still up-to-date. The 17-page regulation is available at: <http://www.osc.gov/documents/hatchact/federal/5cfr734.pdf>

The Office of Special Counsel also operates a Hatch Act hotline, available by phone at 1-800-85-HATCH, or by e-mail at [hatchact@osc.gov](mailto:hatchact@osc.gov). This hotline is staffed by attorneys who specialize in Hatch Act questions. If you use the hotline, you can address your questions to a subject matter expert.

Finally, on 21 Jan 04, the Deputy Secretary of Defense issued an eight-page memo entitled "Civilian Employees' Participation in Political Activities." This memo has a good summary of the rules that apply to DoD civilian employees. It is available at: [http://www.defenselink.mil/dodgc/defense\\_ethics/dod\\_oge/Dep\\_SECDEF\\_Memo\\_21Jan04.pdf](http://www.defenselink.mil/dodgc/defense_ethics/dod_oge/Dep_SECDEF_Memo_21Jan04.pdf)

It is important that Air Force members and civilian employees participate in the political process, but it is also important that they do so within the set of rules that applies to them.

*The U.S. Office of Special Counsel press releases related to this matter are available at:*

[http://www.osc.gov/documents/press/2004/pr04\\_02.htm](http://www.osc.gov/documents/press/2004/pr04_02.htm)

[http://www.osc.gov/documents/press/2004/pr04\\_05.htm](http://www.osc.gov/documents/press/2004/pr04_05.htm)



<b>LEGISLATIVE ACTIVITY</b>			
<b>Bill Num.</b>	<b>Name/Description</b>	<b>Summary</b>	<b>Status</b>
H.R. 2767	Contractors Accountability Act of 2003	Sets out to improve Federal agency oversight of contracts and assistance, and to strengthen accountability of the government wide suspension and debarment system.	Referred to House Committee on Government Reform
H.R. 1348	Construction Quality Assurance Act	Prohibits contractors from “bid shopping” and provides penalty of suspension and/or debarment.	Referred to House Committee on Government Reform
H.R. 746	Responsibility in Federal Contracts Act	Prohibits the Federal government from contracting with parties that have failed to certify the most recent periodic financial report required under Sarbanes-Oxley Act of 2002 that is due before the contract award date.	Referred to Subcommittee on Capital Markets
H.R. 1218	A bill to require contractors with the Federal Government to possess a satisfactory record of integrity and business ethics	Amends Federal defense contract law and the Federal Property and Administrative Services Act of 1949 to prohibit a contractor from being awarded a defense or Federal contract, unless the Federal contracting officer determines that such contractor has a satisfactory record of integrity and business ethics, including compliance with all applicable laws. Outlines information to be considered by a contracting officer in making such determination, with an emphasis on any violations that have been adjudicated during the prior three-year period, as well as certain convictions of and civil judgments rendered against such contractor.	Referred to Committee on Government Reform
S. 1072	Amendment to S. 1072	Allows the Secretary of Transportation to suspend or propose for debarment a contractor that commits a civil or criminal offense.	Unknown
S. 2023	A bill to limit Department of Defense (DoD) contracting with firms under investigation by the DoD Inspector General	Prohibits any official of the DoD from entering into a contract with, or otherwise procuring any property or services from, a person under investigation by the DoD Inspector General, unless the selection of such person for such contract or procurement is made with full and open competition. Certain Presidential exceptions apply as necessary for U.S. national security interests.	Referred to Armed Services Committee



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